

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-011366

05/06/2015

HONORABLE J. RICHARD GAMA

CLERK OF THE COURT
B. Roberts
Deputy

VAN E FLURY

VAN E FLURY
P O BOX 875
LAVEEN AZ 85339

v.

GATEWAY CHEVROLET INC

WILLIAM JAMES FISHER

RULING

The Court received and considered the parties' briefing on Defendant's Gateway Chevrolet, Inc. [Defendant] Motion For Summary Judgment. Plaintiff requested oral argument. However, the Court finds the briefing is sufficient, and that oral argument would not add to the Court's consideration of the issues presented. Accordingly, oral argument is waived pursuant to Ariz. R. Civ. P. rule 7.1[c][2] to expedite the business of the Court. The Court herein issues the following ruling.

General Background. Plaintiff has filed a complaint alleging that Defendant "intentionally interfered with Plaintiff's business dealings". The claim allegedly arises from the purchase by Plaintiff of a vehicle at an auto auction on 4/30/2014. The auction company, Adesa Auto Auction [a non-party], ultimately advised Plaintiff after the sale that the seller was unable to provide a clear title and thus the transaction was cancelled. Initially Plaintiff refused to return the vehicle at issue and subsequently returned the vehicle upon return of the purchase price and an additional \$1000 paid by the auction company. After this transaction was completed the auction company suspended Plaintiff from purchasing vehicles at its facility for a period of time.

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Plaintiff filed this action against Defendant alleging a tort claim of interference with business expectancy.

The facts establish the following:

- Plaintiff purchased the vehicle for \$1,100;
- Subsequent to purchase Plaintiff was asked to return the vehicle because the seller [Defendant] was unable to provide a clear title;
- Plaintiff refused to return the vehicle without a return of the purchase price and compensation; and
- The non-party auction company agreed to the return the check Plaintiff used to purchase the vehicle and in addition compensated Plaintiff in the sum of \$1000.

Defendant asserts that Plaintiff has failed to state a claim upon which relief can be granted. Further, that Plaintiff attained accord and satisfaction by accepting the extra compensation in return of the vehicle. This Court concurs.

Legal Standard. Summary judgment should be granted if the evidence shows there is no genuine dispute about any material fact and the moving party is entitled to judgment as a matter of law. Ariz. R. Civ. P. rule 56[a]. The moving party has the burden of showing that material facts are not genuinely disputed. *Celotex Corp. v. Catrett*, 477 U. S. 317 [1986]. To meet this burden, the moving party must point out the lack of evidence supporting the nonmoving party's claim, but need not produce evidence negating that claim. *Id.* at 325. When the moving party has carried its burden under Rule 56[c], the nonmoving party must show that there are genuine issues of material fact. A material fact is one that might affect the outcome of the suit under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 [1986]. A factual issue is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* The nonmoving party must produce evidence to support its claim or defense by more than simply showing "there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenity Radio Corp.*, 475 U.S. 574 [1986]. The Court must view this evidence in the light most favorable to the nonmoving party, must not assess its credibility, and must draw all justifiable inferences from it in favor of the nonmoving party. *Anderson*, 477 U.S. at 255. Where the record, taken as a whole, could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue of material fact for trial. *Matsushita*, 475 U.S. at 586.

On summary judgment, the nonmoving party's evidence is presumed true, and all inferences from the evidence are drawn in the light most favorable to the nonmoving party. *Eisenberg v. Ins. Co. of North America*, 815 F.2d 1285 [9th Cir. 1987]. But the evidence presented by the parties must be admissible or able to be produced in admissible form. Ariz. R. Civ. P. rule 56[c][2]. Conclusory and speculative testimony in affidavits and moving papers is

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insufficient to raise genuine issues of fact and to defeat summary judgment. *Thornhill Publ'g Co., Inc. v. GTE Corp.*, 594 F.2d 730 [9th Cir. 1979].

Discussion. To establish a claim for interference with contract or business expectancy a party must establish that the other improperly interfered with either the contract or business expectancy. Specifically, that:

- Plaintiff has a contract or business expectancy with another;
- That defendant knew about this contract or business expectancy;
- That defendant intentionally interfered with the contract or business expectancy which cause a breach or termination of the contract or the expectancy to be realized;
- That defendants conduct was improper; and
- That plaintiff suffered damages.¹

Plaintiff has the burden of production to establish the elements of the claim asserted.

The Court finds that Defendant has carried its burden under Rule 56[c]. Accordingly, Plaintiff must show that there are genuine issues of material fact that warrant the presentation of this claim to a jury. Under these circumstances, taking the facts in the light most favorable to Plaintiff, this Court finds, that Plaintiff has failed in his burden of production to establish each element of this claim. There is no direct evidence presented or reasonable inferences alleged that Defendant intentionally interfered with Plaintiff's business expectancy; that this interference was the cause of a breach of his relationship with the non-party auction company; that Defendant's alleged actions were motivated by an improper motive or otherwise improper; and/or that Plaintiff suffered damages.

Further, the Court concurs with Defendants that Plaintiff attained accord and satisfaction by conditioning the return of the vehicle upon the payment of compensation. A claim is discharged whenever a party agrees to accept something of value in resolution of a dispute.²

For the reasons expressed and those contained in Defendant's moving papers;

IT IS ORDERED granting Defendant's Motion For Summary Judgment;

IT IS FURTHER ORDERED dismissing this action with prejudice.

¹ *Wells Fargo v. Ariz. Laborers, Teamsters & Cement Masons Local no. 395 Trust Fund*, 210 Ariz. 474 [2002].

² *Best Choice Fund, LLC v. Low & Childers, P. C.*, 228 Ariz. 502 [App. 2011].